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No. 431

In the Supreme Court of the United States

OCTOBER TERM, 1944

THE UNITED STATES, PETITIONER

v.

JOSEPH H. BEUTTAS, JOHN W. BEUTTAS, AND PAUL H. BEUTTAS, TRADING AS B. W CONSTRUCTION CO., NOT INC.

ON WRIT OF CERTIORARI TO THE COURT OF CLAIMS

REPLY BRIEF FOR THE UNITED STATES

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The respondents in their brief in this Court (pp. 7–11) contend that no decision upon the claim which is here in issue was ever made by the "head of the department" within the meaning of article 15 of their contract with the Government. The court below found, however, that respondents took a timely appeal to the head of the department from the contracting officer's denial of their claim (R. 26); that on June 29, 1936, the Assistant Administrator of Public Works "made written decisions and findings of fact with reference to the various items of the claim asserted by plaintiffs on appeal" and denied respondents'

claim for reimbursement for the higher wages paid by them (R. 29);[1] that on February 12, 1937, respondents addressed a letter to the Administrator petitioning him "to make a decision on the various items of the claim" which had been considered "by the Assistant Administrator" (R. 31); and that on May 20, 1937, the Federal Emergency Administrator of Public Works "after considering * * * [respondents'] appeal to him" made "findings of fact, conclusions, and recommendations on the various items of [respondents'] claim" (R. 31). Further, the court below in its opinion accepted the view that the "contracting officer and head of the department" had rendered a decision under article 15 of the contract (R. 37) and proceeded to consider the propriety of according finality to "this decision". We submit that these findings of the Court of Claims are conclusive.

If is true that in the court below the Government made the alternative contentions that no decision had been rendered by the head of the department, and that the findings of the head of the department, if deemed to be a decision, did not aid the claimant. The Court of Claims accepted the view that a decision had been rendered by the head of the department. In this Court the

[1] As defined in article 28 of the contract here in question, "Head of Department" means the Federal Emergency Administrator of Public Works, and "his representative" means any person authorized to act for him (R. 20).

Government has accepted the view taken by the court below.

The record does not contain an entirely consistent terminology in regard to the nature of the several decisions which were rendered upon respondents' claim. The decision of the contracting officer is referred to as "final Change Order No. 1", first issued by the Director of Housing on April 17, 1936 and "revised and reissued" by the Assistant Administrator of Public Works on June 25 of that year (R. 28). The decision rendered by the Assistant Administrator of Public Works on June 29, 1936, is referred to as "decisions and findings of fact * * * on appeal" (R. 29). The decision of the Federal Emergency Administrator of Public Works, "after considering plaintiffs' appeal to him", is referred to as "findings of fact, conclusions, and recommendations * * * in a letter addressed to the Comptroller General" (R. 31). Judge Littleton's dissenting opinion refers to the decision of the Assistant Administrator of Public Works as that of the head of the department by his authorized representative and, accordingly, regards this decision as the final one under article 15 (R. 44–45).

These several characterizations of the various administrative decisions do not give rise to confusion, however, if the evident intent of the findings of the Court of Claims is followed. There were, in this view, three successive administrative decisions, the third of which, made by the head of

the department pursuant to respondents' original appeal and subsequent letter to him, was more favorable to the respondents than the other two. See the Government's principal brief, pp. 5–7.

Notwithstanding the form of the decision of the head of the department, it was conclusive under the contract and binding upon the Comptroller General. *United States* v. *Mason & Hanger Co.*, 260 U. S. 323, 326; *Fred R. Comb Co.* v. *United States*, 100 C. Cls. 240, 247; *McShain Co.* v. *United States*, 83 C. Cls. 405, 409–410. Cf. *Globe Indemnity Co.*, v. *United States*, 291 U. S. 476, 478, 483.

Respectfully submitted,

CHARLES FAHY,
Solicitor General.
FRANCIS M. SHEA,
Assistant Attorney General.
RALPH F. FUCHS.
DAVID L. KREEGER,
Special Assistant to the Attorney General.
PAUL A. SWEENEY.
JEROME H. SIMONDS.

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